NEW SYLLABUS

536

Roll No. .....

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 12***

NOTE : *Answer **ALL** Questions.*

PART–I

1. Case Study :

ABC Ltd. was incorporated on May 12, 1986, under the Indian Companies Act, having its registered office at Mumbai, Maharashtra. The present capital structure of the petitioner company is as follows :

₹ 1,000 crore Authorised Capital-100 crore equity shares of ₹ 10 each. Issued Subscribed Capital and paid-up capital of ₹ 780 crore -78 crore equity shares of ₹ 10 each [includes equity shares represented by GDRs]. The company is having 4 business segments related to manufacturing of products L, M, N and O. Turnover of O product is around ₹ 1,300 crore. Asset of ABC Ltd are ₹ 2,700 crore out of which product O related asset are ₹ 1,400 crore.

XYZ Ltd. is a company having its registered office at Surat, Gujrat. Authorised, issued and paid up capital of company is ₹ 750 crore having turnover of ₹ 820 crore. It is engaged in the business of manufacture and sale of product O. Assets of XYZ Ltd. are ₹ 1,500 crore.

XYZ Ltd. already hold 14.98% of the equity shares of the ABC Ltd. acquired at ₹ 267 per share from Six ventures and got two directors in Board of Directors of ABC Ltd. XYZ Ltd. has made an open offer to shareholders of ABC Ltd at ₹ 190 per share to acquire controlling stake of ABC Ltd. ABC Ltd. Management opposed the open offer citing reasons of low price that was not beneficial to the shareholders of ABC Ltd. but in reality the management of ABC Ltd. had fear of losing control over the company. XYZ Ltd. had an eye on the Product O business of ABC Ltd. for a long time. The open offer was a step towards fulfilling the dream. Full control of product O business was ultimate purpose of XYZ Ltd. ABC Ltd. script was trading at ₹ 207.50 on the closing hours of trading at the Bombay Stock Exchange.

After lot of fights and hassles, both companies came to truce. Pursuant to acquisitions through negotiated transactions, a proposal to demerge the ABC Ltd. company's Product O business into company TRM Ltd. and acquisition of 51% controlling stake in TRM Ltd. was given by XYZ Ltd. and after due deliberation, the Board of Directors of the ABC Ltd company accepted the proposal for demerger of the Product O business into TRM Ltd. and subsequent acquisition of 51% stake in same by XYZ Ltd. After demerger TRM Ltd. will have around 35% market share of product O business on pan India basis.

ABC Ltd. Employees Welfare Foundation is an employee welfare trust established under the Indian Trusts Act, 1882.

Shareholders of ABC Ltd. and XYZ Ltd. call meeting of shareholders, creditors and pass special resolution. They submit copy of resolution to ROC, NCLT and publish in newspaper about successful arrangement. Few members of ABC Ltd. having 1.5% shares of valued ₹ 10 lakh objected to scheme of Acquisition by XYZ Ltd. ABC Ltd. Employee trust also objected to acquisition. NCLT cancelled the scheme citing grounds of unfair, unjust and objections of members having 1.5% shares in company.

Based on above facts, answer the following with reasons quoting relevant provisions :

(*a*) Whether the proposed combination crosses the thresholds prescribed by the Competition Commission of India thus necessitating notice to CCI before going for proposed acquisition ?

(*b*) Is it a hostile or friendly acquisition ? Is it beneficial to go for taking control of ABC Ltd for gaining access to product O business or is it beneficial to cause demerger of Product O business by ABC Ltd into TRM Ltd and then acquiring of 51% controlling stake in same by XYZ Ltd ? Will it result in reduction of capital requiring separate approvals ? Explain briefly.

(*c*) Whether the compliance approvals given by the shareholders is sufficient for successful acquisition of product O business of ABC Ltd. Examine critically.

(*d*) Analyse whether NCLT will approve the draft scheme keeping in view the objection raised by shareholders of ABC Ltd ?

(*5 marks each*)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (*a*) PQR Ltd. is a company listed on the National Stock Exchange. The latest audited financial position of PQR Ltd. is as under :

Paid up equity Capital	₹ 780 Crore
Free Reserves	₹ 39,564 Crore
Share Premium	₹ 1,456 Crore

Total secured and unsecured debts ₹ 1,867 Crore

The company intends to buy-back its fully paid-up equity shares of ₹ 10 each not exceeding 21,617,000 equity shares at ₹ 1,945 per equity share payable in cash for aggregate consideration not exceeding ₹ 4,204.51 crore. Examine whether the above buy-back offer through tender route can be approved by the Board of Directors for all 21,617,000 equity shares, keeping in view the legal framework for buy-back of securities ?

(*5 marks*)

(*b*) Dragon Esquire Ltd. Indian company demerged plastic toys division into Zen Ltd. If demerger satisfies conditions of section 2(19AA) of the Income Tax Act, 1961, advise Zen Ltd, regarding the tax concession available to the Zen Ltd, the Resulting Company.

(*5 marks*)

(*c*) ABC and Co. (P) Ltd. and XYZ Ltd. have finalized a scheme of arrangement. The registered offices of both the companies are located in Delhi. A joint-petition is proposed to be filed before the Tribunal for sanction of the scheme.

Give your brief opinion in the light of the provisions of the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 whether such a joint-petition can be filed ?

(*5 marks*)

(*d*) X Ltd. acquired Y Ltd. under the scheme of merger sanctioned by the Tribunal, Y Ltd. ceases to exist. Consideration is discharged by way of issue of equity shares of X Ltd. to the shareholders of Y Ltd. in the ratio of 1 : 1 X Ltd. already held 5% in Y Ltd. as an investment prior to the effective date of merger i.e., 1st October 2022. 86% of the shareholders (by face value) of Y Ltd. excluding X Ltd. agreed to become shareholders of X Ltd. Examine critically whether the above case will qualify to be classified as merger as per AS-14.

(*5 marks*)

OR (Alternate question to Q. No. 2A)

2A. (*i*) In any scheme of compromise and arrangement, merger and amalgamation share exchange ratio is needed to be calculated which requires basic calculation of EBITA, PAT and Super Profit for valuation of shares. From the following information related to Wise Ltd., calculate :

(*a*) EBITA

(*b*) PAT

(*c*) Super profit

(₹ Figures are given in lakh)

Net tangible assets ₹ 900

Operational Revenue ₹ 2,150

Employment Cost ₹ 340 (including onetime payment of ₹ 40 lakh, not likely to occur in future) Managerial Remunerations ₹ 75 (to be increased by ₹ 20 lakh from next year)

Cost of goods sold ₹ 920

Finance charges ₹ 170

Depreciation/Amortization ₹ 70

Tax provision is to be made @ 30%.

Expected rate of return on assets is to be assumed @ 25%.

(*5 marks*)

(*ii*) Petition by Frugal Industries Limited (19.12.2019), under a scheme of arrangement under Section 230-234 of the Companies Act, 2013 [in the nature of demerger] was filed before National Company Law Tribunal (''NCLT''), Mumbai Bench. Demerger application contemplated transfer of hiving off two specified undertakings of Frugal Industries Limited into two overseas Resulting Companies, viz. Frugal (Sweden) B. V., and Frugal Holdings USA Inc.

Since, Petitioner Frugal Comapany is listed company having its shares listed on BSE Limited and National Stock Exchange of India Limited, therefore the company sought the approval of the Stock Exchanges and SEBI which provided their no objection to the Scheme of Demerger. Further, meetings of equity shareholders and unsecured creditors were convened, whereby demerger scheme was approved by majority of equity shareholders and unsecured creditors. However, Regional Director of Companies red flagged the following observation on scheme of demergers :

(*a*) Section 234 refers to cross border mergers and amalgamations and not to demergers.

(*b*) Section 2 (19AA) of the Income Tax, 1961 is violated and same will not amount to tax neutral transaction.

(*c*) Company to comply with provisions of FEMA and RBI.

Advice as Company Secretary of the Company on the observations raised by RD.

(*5 marks*)

(*iii*) Raja Ltd has sold entire engineering division to Vibha Ltd for ₹ 2,500 crore while retaining other remaining business of chemicals and fertilisers with it :

– Is this sale of engineering division slump sale ?

– How the gain/loss on slump sale is calculated ?

– Explain the taxation aspects of slump sale.

(*5 marks*)

(*iv*) ''Documentation is an important aspect in fulfilment of legal requirements and obligations in merger and amalgamation for an effective and successful venture.'' Analyse the statement indicating the important steps to be involved for successful completion of mergers or amalgamations.

(*5 marks*)

PART-II

3. (*a*) ''Valuers must follow the ethical principles of integrity, objectivity, impartiality, confidentiality, competence and professionalism to promote and preserve the public trust.'' Explain the core principles of valuation to be followed by valuers.

(*b*) Mr. VG is a practicing member of ICSI and he has also passed PMQ course exam on Valuation conducted by ICSI in the year 2022. Recently VG was appointed as valuer by RJ Electronics Ltd. for valuation of assets/liabilities under merger scheme. Mr. VG has submitted valuation report which has been challenged by directors on grounds of valuers' credentials. Evaluate director's objection giving relevant provisions.

(*5 marks each*)

4. (*a*) ''Determining the value of a business is complicated and intricate process. Valuing a business requires the determination of its future earnings, potential and risk inherent in it.'' Examine the statement explaining major factor influencing the valuation of a business.

(*b*) ABC Ltd is going through the report on valuation of assets/debts/property of company submitted by registered valuer. Discuss salient Contents of Summarized Valuation Report which must be invariably incorporated in valuation report ?

(*5 marks each*)

PART-III

5. (*a*) M/s SHIKSHA Pvt. Ltd (Operational Creditor) provided digital classroom services to M/s ABC Pvt Ltd. (Corporate Debtor) between 16th April 2015 and 23rd June, 2020 and accordingly the Operation Creditor raised 219 invoices. In light of the non-payment by Corporate Debtor, the Operation Creditor issued Demand Notice under Section 8 of the IBC, 2016 wherein date of default was mentioned as 16th April 2015 (the date of first invoice) and subsequently initiated proceedings under Section 9 of the IBC, 2016 wherein the date of default was mentioned as 23rd June, 2020 (the date of last invoice). As a company secretary of M/s SHIKSHA Pvt. Ltd. (Operational Creditor) advise whether ground of claim is time barred or not citing relevant case laws.

(*5 marks*)

(*b*) Mr. G. (Appellant) filed an application under Section 7 of the IBC, 2016 with the National Company Law Tribunal (NCLT) seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against BW Private Limited. On 26th August, 2022, NCLT dismissed the application. Subsequently, on 2nd September, 2022, the Appellant applied for a certified copy of the NCLT order, which the NCLT's registry received on 5th September, 2022. On September 15, 2022, the certified copy of order was provided to the Appellant. Following this, on 10th October, 2022, the Appellant e-filed an appeal with the National Company Law Appellate Tribunal (NCLAT) against the NCLT order along with an application for condonation of a five-day delay. As a Company Secretary of petitioner company [appellant] advise about time barred issues/ admissibility of appeal before NCLAT.

(*5 marks*)

(*c*) The Insolvency and Bankruptcy Code, 2016 read with Regulation 37 of CIRP Regulations provides for various measures to resolve the insolvency of corporate debtor ? Explain those measures.

(*5 marks*)

(*d*) In the third meeting of Committee of Creditors of ABC Company Ltd, the Interim Resolution Professional was replaced by another person as the Resolution Professional. The appellant wants to file an application before the Adjudicating Authority for confirmation of the RP's appointment. As legal advisor of ABC Company, advise with relevant case laws as to whether the Adjudicating Authority can reject the application on the basis that the Committee of Creditor's decision was taken in its third meeting (and not the first meeting, as prescribed in the IBC) and no reasons were given for not adopting the resolution to replace the Interim Resolution Professional in the first meeting ?

(*5 marks*)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (*a*) Examine whether the recommendations of the Insolvency Law Committee (ILS) on Cross-border insolvency are in line with the provisions set out in the UNCITRAL Model Law on Cross-border insolvency ?

(*b*) A Scheduled Indian Bank advanced money to XYZ limited and the debt due to non-payment has been classified as 'Doubtful' by the Bank. The lender Bank intends to proceed against the debtor under SARFAESI Act, 2002. What are the majors available to the Bank for recovering its secured debt ?

(*c*) Abid Industries Ltd filed petition for insolvency in NCLT, Delhi which admitted petition and subsequently resolution plan was submitted by RP to committee of creditors which was approved by 87% majority. Resolution plan provided for extinguishment of all claims (except criminal proceedings) against the Corporate Debtor, exemption of all taxes/dues by the Government/local authorities, and closure of all proceedings pending against the Corporate Debtor relating to such dues. The Resolution Plan, so approved, has been submitted to NCLT for approval. Referring to relevant section and case law, discuss the tenability of Resolution Plan duly approved by 87% majority.

(*d*) Operational Creditors of Joy Ltd moved a petition to NCLT against RP for directions under section 60(5) of the IBC, 2016 to direct the RP to give notice of all CoC meetings, to provide minutes of the meeting and to permit to attend the meetings of CoC. As per the operational creditors, their debt is more than 10% of the operational debt and hence, as per the Code they must be allowed to attend the meetings. Are operational creditors legally entitled to attend and vote at meeting of CoC ? Discuss by giving relevant case laws.

(*5 marks each*)

OR (Alternate question to Q. No. 6A)

6A. (*i*) Who is contributory ? Critically examine IBC provisions regarding Liquidator's authority to realise amount due from contributory and Contributory's right to receive any surplus left after paying all dues by Liquidator.

(*ii*) Try & Win Ltd company has applied to Registrar of Companies (ROC) for striking off its name from register of companies on 22nd July, 2023. Company has recently [on 26th June 2023] shifted its registered office from Patna to Kolkata. What are legal provisions in this context ? Elucidate.

(*iii*) Section 208 (1) of the Insolvency and Bankruptcy Code 2016 says that where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take actions as may be necessary. What are the functions and obligations of Insolvency Professionals ?

(*iv*) Companies (Winding-up) Rules, 2020 allow certain classes of companies to close their business by making a winding-up application to Central Government without going to NCLT. Explain the summary procedure for liquidation under Companies (Winding-up) Rules, 2020.

(*5 marks each*)

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NEW SYLLABUS

536

Roll No. .....

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 12***

NOTE : *Answer* ***ALL*** *Questions.*

PART–I

1. ETA Motors Ltd. is an Indian automotive company, headquartered and registered in Delhi, incorporated on 12th May, 2002. The company manufactures vans and buses. The technical experts of the company have an opinion that four critical technological disruptions—mobility, autonomous driving, electric vehicles, and connected technologies—are poised to revolutionize the automotive landscape. The Company besides its plan to increase its market share by 20% to 35% by 2025-26, wants to enter the global market through joint ventures or technology transfers. The company decided to chalk out an expansion strategy for the same.

K&G Associates, the official and legal advisors to the Company were asked to deliberate on the expansion strategies. In their presentation to the Board of directors of ETA Motors Ltd., they explained that Mergers and Acquisitions (M&A) and Takeovers are common occurrences in the business world as entities aim for inorganic growth and diversification. By merging, the companies hope to reap the benefits by becoming bigger and dominating and also through tax benefits, economies of scale, acquiring new technology and improved market reach and industry visibility. After gaining an insight into the M&A opportunities, ETA Motors Ltd. created a separate (M&A) team to look out for acquisition targets as the Board of Directors felt that strategic assessments of companies, industry expertise, due diligence, merger integration, and operational improvements represent areas where knowledge and skills are required for the success of a merger or acquisition.

(M&A) team was assigned the task to do the investigating effort and to gather all relevant facts and information about the targets that can influence a decision to enter into a transaction or not. M&A team after their detailed due diligence recommended an unlisted company, Daisy Commercial Vehicle Company Ltd. (DCVL) in South India as a potential target to give ETA Motors Ltd. a major breakthrough on the expansion front. The acquisition offer seemed to open up possibilities for strong synergies like expansion of the product line, good R&D capabilities and new markets.

As Merger & Acquisition process is normally proceeded by formulation of strategy, carrying out due diligence, conducting valuation, ensuring all legal compliances and considering the aspects of stamp duty and other applications, K&G Associates was consulted regarding legal procedures and compliances under various acts and also regarding the valuation aspects of shares.

Both the companies deliberated and discussed together at the Board level and came out with a scheme. The scheme received approval of 96% of the shareholders of DCVL but rest 4% dissented from the scheme.

K&G Associates advised that Section 235 and 236 of the Companies Act, 2013 lays down legal requirements for purpose of takeover of an unlisted company through transfer of undertaking to another company. Where the scheme has been approved by the holders of not less than nine tenth (90%) in value of the shares of the DCVL whose transfer is involved, ETA Motors Ltd., may give notice to the dissenting shareholders that transferee company desires to acquire their shares. The scheme shall be binding on all the shareholders of the DCVL (including dissenting shareholders), unless the Tribunal orders otherwise (i.e., that the scheme shall not be binding on all shareholders). Accordingly, the ETA Motors Ltd. shall be entitled and bound to acquire these shares on the terms on which it acquires under the scheme (the binding provision).

Accordingly, the circular along with all information as provided in the Act was sent to the dissenting shareholders in Form No : CAA 14 to the last known address of the dissenting shareholders. Some of the shareholders held their shares in DEMAT form.

Based on the above facts, answer the following questions :

(*a*) Due diligence is a meaningful analysis of the collected information to arrive at some decision about the potential transaction. Explain the various types of Due diligence which could be conducted by M&A team while finalising a potential company for takeover.

(*b*) Whether the company has done sufficient compliance for giving Notice to dissenting shareholders in accordance with Rule 26 A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 which deals with purchase of minority shareholding held in DEMAT form ?

(*c*) As the legal advisor of the company, guide the company regarding determination of the price to be paid by acquirer for purchase of equity shares of the minority shareholders of DCVL under the provisions of Rule 27 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(*d*) Will the takeover achieved in the above process fall within the meaning of amalgamation under the Income Tax Act, 1961 and will benefits of amalgamation provided under the said Act be available to the acquisition under consideration ?

(*5 marks each*)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (*a*) ABC Ltd. is having a share capital of ₹ 35 Crore and XYZ Ltd. is having a share capital of ₹ 45 Crore. DNF Ltd. was formed to take over the business of ABC Ltd. and XYZ Ltd. at a purchase consideration of ₹ 45 Crore and ₹ 38 Crore respectively, payable in shares of DNF Ltd.

The assets and liabilities were taken over at their carrying amounts.

Compute the Goodwill or Capital Reserve.

(*5 marks*)

(*b*) Company ABC purchased 51% equity interest in Company XYZ. The consideration is paid in cash. The relevant dates are as under :

Date of agreement with shareholders –1st June, 2022

Appointed date as per agreement –1st April, 2022

Date of obtaining TRAI Permission –1st July, 2022

Date of payment of consideration –15th July, 2022

What will be the acquisition date ?

Whether the 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control. Discuss.

(*5 marks*)

(*c*) A Ltd. is incurring losses for past 8 years as several of its business units are running under losses. The balance sheet does not reflect the true position of the business, as higher net worth is depicted, than that of the real one. The assets are overvalued and it has many intangible and fictitious assets, which does not depict a true picture of the financial statements. The management of the company approaches Mr. X, a practising Company Secretary to suggest the way out in such a situation. Prepare suggestive measures for Mr. X for resolution of the current status with respect to corporate restructuring.

(*5 marks*)

(*d*) Flora Ltd. and Fauna Ltd. submitted joint application to National Company Law Tribunal (NCLT) Kolkata which has approved merger into Happy Ltd. and passed an order. Happy Ltd. management is of opinion that West Bengal govt has no authority to levy stamp duty. Here, value of shares allotted by Happy Ltd. is ₹ 500 crore and cash ₹ 57 crore. Citing relevant decided cases, as Company Secretary of Happy Ltd. give advice about legal status for levy of West Bengal state stamp duty and value over which stamp duty will be levied.

(*5 marks*)

OR (Alternate question to Q. No. 2)

2A. (*i*) Outline a list of conditions which companies proposing to enter into fast-track mergers are required to follow under Section 233 of the Companies Act, 2013 along with Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(*5 marks*)

(*ii*) Two insurance companies Goyenka General Insurance and Binani Alliance General Insurance decide to amalgamate.

Since the amalgamation or merger involved companies being regulated by a sectoral regulator like Insurance Regulatory and Development Authority (IRDA), the approval of the Regulators was also taken in addition to compliance with the Companies Act, 2013.

In addition, where an amalgamation takes place between any two or more insurers, the insurer carrying on the amalgamated business has to submit some statements to the IRDA.

Make a list of documents to be submitted under the provisions of Section 37 of the Insurance Act, 1938 in this context.

(*5 marks*)

(*iii*) The Competition Commission of India will have jurisdiction even if both the parties to an agreement are outside India but only if the agreement, dominant position or combination entered into by them has an appreciable adverse effect on competition in the relevant market of India. Comment and explain the extra territorial jurisdiction of Competition Commission of India.

(*5 marks*)

(*iv*) Dneers Infotech Ltd., an Indian company, is contemplating to take over Divine Infotech Pvt. Ltd. of Indonesia in accordance with procedures under the provisions of the Companies Act, 2013. Advice top management on key regulations which need to be followed during an inbound merger with respect to the following transactions :

(*i*) Transfer of Securities

(*ii*) Branch/Office outside India

(*iii*) Borrowings

(*iv*) Transfer of Assets

(*v*) Opening of overseas bank accounts for resultant company

(*5 marks*)

PART-II

3. (*a*) Company X, the parent company, is demerging its subsidiary, Company Y, into a separate entity called Y New.

The following information is available for company X and company Y :

1. Company X :

   Number of outstanding shares : 10 crores

   Market price per share : ₹ 60

2. Company Y :

   Number of outstanding shares : 6 crores

   Market price per share : ₹ 30

You are required to determine :

– The swap ratio and

– Based on the swap ratio, calculate the number of shares a shareholder would receive in the company Y New if he owns 20,000 shares in Company X.

(*5 marks*)

(*b*) In the process of valuing a business, a detailed, comprehensive analysis and the ability to develop accurate projections and assumptions are necessities. Moreover, application of finance theory and professional judgment in the appropriate places is also required. Hence, every valuer faces a lot of hindrances in the process. Discuss some of the most common hindrances faced by valuers during business valuation process.

(*5 marks*)

4. (*a*) PQR Ltd. has decided to issue Sweat equity shares, to compensate its employees for their contributions to the company by way of time, effort, expertise, increasing revenue, improving operational efficiency, or developing innovative products or services etc.

In the light of the provisions under the sub rules of rule 8 of Companies (Share Capital and Debentures) Rules, 2014 w.r.t. issue of sweat equity shares, advise the Board of directors of PQR Ltd. regarding :

(*i*) Valuation of sweat equity shares

(*ii*) Treatment of the transaction in the books of PQR Ltd.

(*b*) G-tech solutions is a fast-growing company and is exploring the options for fund raising. The Management of Company has approached you to determine the valuation of their business using Discounted Cash Flow Market Approach.

Explain the steps involved in this method of valuation of business.

(*5 marks each*)

PART-III

5. (*a*) An application under section 9 of the Insolvency and Bankruptcy Code (IBC), 2016 was filed by N, operational creditor of Delta Pvt. Ltd. and was admitted by the NCLT on 30th July, 2024. Later on, the parties amicably settled the dispute and executed a Memorandum of Understanding on 06th August, 2024. In light of the settlement, Form-FA was received by the IRP on 08th August, 2024 for withdrawal of the Application in terms of Section 12A of the IBC read with Regulation 30A. Accordingly, an Application for withdrawal was filed by the IRP on 09th August, 2024 before NCLT.

During pendency of said Application, a Committee of Creditors (CoC) was constituted consisting of two financial creditors and the 1st meeting of CoC was also held. One financial creditor having 20% of voting shares dissented to allow withdrawal. NCLT refused to entertain the withdrawal application on the ground that it is not supported by 90% vote of CoC. As a Company Secretary of the corporate debtor, advise whether the withdrawal application is tenable citing relevant case laws ?

(*5 marks*)

(*b*) Upon commencement of the Corporate Insolvency Resolution Process (CIRP) in ABC Ltd. under IBC, a complaint was found to be pending under section 138 of the Negotiable Instruments Act, 1881 against Mr. X, Chairman and Managing Director of ABC Ltd. In the matter, NCLT also approves the resolution plan with a change

in management and control in the company. Thereupon, Mr. X sought to quash the prosecution under section 138 of the Negotiable Instruments Act, 1938 in terms of the protection available to him under Section 14 of the IBC. Discuss the possibility of getting the abovesaid prosecution quashed, citing relevant case laws under IBC.

(*5 marks*)

(*c*) TERO Ltd. entered into supply contract with Telecom Regulatory Authority of India (TRAI) for supply of fibre optic cables. TRAI has defaulted in paying invoice value as per demand notice issued to them. TERO Ltd. filed CIRP application in NCLT filed against TRAI. The said CIRP application was rejected. Discuss the legal status of NCLT order and advise TERO Ltd.

(*5 marks*)

(*d*) Mr. X, who is a Practising Company Secretary is approached by an Association of Small Enterprises. The members of Association want to understand Pre-Packaged Insolvency Resolution Process. As an Assistant to Mr. X, you are required to prepare a brief on Pre-Packaged Insolvency Resolution Process, indicating features of Pre-pack insolvency resolution process under IBC and its benefits to make the members of Association understand the features.

(*5 marks*)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (*a*) Resolution Professional (RP) of TMT Ltd. filed an application seeking approval of the resolution plan submitted by a resolution applicant, who is a Financial Creditor with 82.7% voting share in the CoC. The plan provided that the resolution applicant will sell the corporate debtor in two years. It provides for generation of income from

ongoing operations and no upfront money is being brought in by the resolution applicant. Comment in light of relevant case laws, will the resolution plan be approved by NCLT ?

(*5 marks*)

(*b*) A key duty of the RP under section 25(2)(h) of the IBC is to invite Prospective Resolution Applicants (PRAs), who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans. The details pertaining to the steps for inviting, submitting, evaluating, and approving the resolution plan (and timelines in relation to them) are detailed in the CIRP Regulations.

Give the timelines for the following as provided in the CIRP regulations.

(*i*) Publish brief particulars of the invitation for expression of interest in Form G of the Schedule-I.

(*ii*) Last date for submission of expression of interest.

(*iii*) Objection for inclusion or exclusion of a PRA in the provisional list.

(*iv*) Issue of information memorandum, evaluation matrix and a request for resolution plans.

(*v*) Submission of resolution plans to the RP.

(*5 marks*)

(*c*) While the Insolvency professionals assist in the insolvency resolution proceedings envisaged in the IBC, the Information Utility, on the other hand, collect, collate, authenticate and disseminate financial information. Explain the purpose of formation of Information utilities highlighting its obligations under Section 214 of the Insolvency and Bankruptcy Code, 2016.

(*5 marks*)

(*d*) The Committee of Creditors recommended the liquidation of the Gopi Ltd. i.e., corporate Debtor and the National Company Law Tribunal (NCLT) i.e., adjudicating authority did not concur with the decision of the Committee of Creditors. Adjudicating Authority discarded the recommendation of the CoC with 87.30% of vote share and gave its own directives overriding the commercial wisdom of the CoC. Citing relevant case laws, discuss as to what will be the merit of appeal filed by Gopi Ltd against National Company Law Tribunal (NCLT) decision in National Company Law Appellate Tribunal (NCLAT) ?

(*5 marks*)

OR (Alternate question to Q. No. 6)

6A. (*i*) Creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder. Define creditor and citing relevant case laws express your opinion regarding legal tenability of filing of CIRP by decree holder.

(*5 marks*)

(*ii*) X was appointed as an official liquidator of ABC Company Ltd. at the time of passing of the order of winding up by NCLT. After few months, X suffered a cardiac arrest and due to his sudden demise, his position has become vacant.

Elucidate the powers of Tribunal w.r.t removal and replacement of liquidator in place of X under Section 276 of the Companies Act, 2013.

(*5 marks*)

(*iii*) Sarwam Technologies Pvt. Ltd. is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455 of the Companies Act, 2013. The Board of directors of Sarwam Technologies Pvt. Ltd. intend to file an application for removal of name of company from the Register of Companies (ROC). The Board of directors called a meeting of shareholders and 66% of the shareholders in terms of paid-up capital gave their consent to the proposal and thereafter the application was filed with ROC.

Discuss the tenability of the application filed with ROC for removal of name.

(*5 marks*)

(*iv*) Critically dwell upon/describe relevant enabling provisions for cross border transactions under Insolvency and Bankruptcy Code, 2016 ?

(*5 marks*)

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NEW SYLLABUS

536

Roll No. .....

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 16***

NOTE : *Answer **ALL** Questions.*

PART–I

1. Pysunsmart Fire Protection Limited (PFPL) is a listed company on the Bombay Stock Exchange (BSE). It is engaged in the manufacture of industrial fire extinguishers. The company has seen a steady growth over the past few years and has attained a robust market presence. The company's stock has been gaining attention due to company's strong pipeline of upcoming new products and expansion into new markets. As a result, the stock price of (PFPL) has been steadily rising.

A and B have been close friends and business partners over years. Over time, they have started investing jointly in several listed company, including PFPL.

C is a majority shareholder of a company "C holdings" and has also expressed his interest to purchase more shares in PFPL through C holdings and has been in talks with A, B, and Z about a potential joint acquisition strategy to gain control over the company.

Z a prominent investor has been closely monitoring the performance of PFPL. He believes that PFPL is undervalued relative to its growth prospects. He has identified that if the company's product pipeline succeeds, it could increase the company's market capitalization significantly. He already holds 20% shares in PFPL and is interested in increasing his stake further.

While all these shareholders have not made any formal agreements with each other but they have had multiple informal meetings where they discussed the possibility of working together.

PFPL had conducted a buy back through an open offer in order to improve its earning per share (EPS) and boost stock prices. Due to this, the total number of shares of PFPL in circulation decreased and as a result the shareholding of one shareholder, Q, increased from 24% to 28%.

PFPL is also considering proposals for merger with Sangam Limited, a manufacturer in same product. PFPL has attained a robust market presence in North India but operating at a much smaller scale in south. Merger with Sangam Limited will open the avenues to increase its market share in South too. The board of directors of PFPL have shown keen interest in doing premerger due diligence as they want to ensure the post-merger success.

Though they have not received any red flag from any other department but HR head who is a part of premerger due diligence team has raised a concern. PFPL has a formal corporate culture, with a hierarchical structure whereas the employees of Sangam Limited are young and thrive in a culture that values innovation and informality. Sangam Limited operates in a flat structure where decision making is quick and decentralized. The HR Department of PFPL wants to draw attention to the problems that might come up regarding the cultural integration and human aspects of combining these companies who are having starkly different cultures. A meeting of Board of Directors has been called to discuss the matter.

Based on the above facts, answer the following questions :

(*a*) As an advisor to A, B, C and Z, guide them about the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which regulate the acquisitions of large stakes in listed companies. What are the typical steps and corresponding timelines for the process advised by you ?

(*b*) Q has approached you to seek guidance on whether the increase in his voting rights in PFPL due to the buyback of shares by the company attract the obligations under sub-regulation 3 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and why ?

(*c*) The acquiring companies often use cash deals or stock deals for acquisition. Differentiate between the two, enumerating the advantages of cash deals and stock deals. What are the considerations to be kept in mind while making a choice between the two ?

(*d*) The HR Head strongly believes one modification that has great potential to affect the merged entity is a change in the organizational structure. Regardless of whether the change is large or small, planning and an intense analysis are vital to creating a decision-making and communication framework that will support post-merger objectives and help the new business grow. As the member of the HR team, what do you suggest to synchronise these differences in culture and organizational structure of Sangam Limited and PFPL especially during the premerger diligence.

(*5 marks each*)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (*a*) To classify a merger, one needs to look at the nature of companies involved and the rationale behind the deal. The main types of mergers are Congeneric Merger, Horizontal Merger, Vertical Merger, Conglomerate Merger, and Reverse Merger. Classify the following mergers into the type of merger giving the justification for such classification :

(*i*) Facebook's acquisition of Instagram.

(*ii*) Combination of a computer system manufacturer with a UPS manufacturer.

(*iii*) Berkshire Hathway acquired Lubrizol.

(*5 marks*)

(*b*) Company X, has acquired Company Y, in a merger transaction. The acquisition is considered to be in nature of purchase. As per the merger agreement, the fair value of identifiable assets and liabilities of the company is 150 lakhs and 50 lakhs respectively.

The purchase consideration is to be paid as follows :

One share of X and ₹ 40/- per share in cash in exchange of one share of Y. Each share of X is valued at ₹ 80/- per share.

The total number of shares is of Y are 1,00,000.

Calculate the following from the above transaction in the books of transferee company X :

- Purchase consideration
- Fair value
- Goodwill/Capital reserve.

(*5 marks*)

(*c*) Briefly explain methodology for arriving at the offer price under Regulation 8(2) of SEBI (SAST) Regulations, 2011.

Calculate the Offer Price in the case of direct acquisition of shares from the following information (where shares are frequently traded on the stock exchange) :

(*i*) Negotiated price per share available of the target company are : ₹ 15, ₹ 13, ₹ 14;

(*ii*) Volume-weighted average price paid or payable for acquisitions : ₹ 14 (26 week); ₹ 16 (52 week)

(*iii*) Price paid or payable for any acquisition : ₹ 17 (26 week); ₹ 15 (52 week)

(*iv*) Volume-weighted average market price of such shares : ₹ 18 (30 days), ₹ 15 (60 days).

(*5 marks*)

(*d*) Under a "Scheme of Amalgamation", "Acme Inc." (Transferor Company) is being merged with "Beta Corp." (Transferee Company), where Acme Inc.'s assets and liabilities would be transferred to Beta Corp., resulting in Acme Inc. dissolving, with shareholders receiving a specific exchange ratio of Beta Corp. shares for their Acme Inc. shares, aiming to achieve operational synergies and cost savings by combining operations under one entity.

In this respect, Managing Director of Transferee Company approaches you as a Practising Company Secretary for seeking advice on the list of key documents required to be filed in this scheme of amalgamation. Advise in the matter.

(*5 marks*)

OR (Alternate question to Q. No. 2)

2A. (*i*) As per the scheme of arrangement, 'Software Undertaking' of S India is proposed to be transferred to S Software under Sections 391 to 394 of the Companies Act, 1956. One of the conditions of the scheme was that any excess in the value of net assets of software undertaking transferred to the resulting company shall be applicable for distribution to the shareholders of the resulting company.

Regional Director of Northern Region, Ministry of Corporate Affairs (MCA) has raised objection in his affidavit filed with the High Court stating that excess, if any, in the value of the net assets of the software undertaking should be adjusted to the capital reserve as prescribed in AS-14 and not to the general reserve as proposed in the scheme of arrangement.

Decide the matter with reference to a decided case law.

(*5 marks*)

(*ii*) Apka Bank, one of the largest private sector bank, is willing to merge with Hamara Bank, a small regional bank. Apka Bank wants to expand its footprint in rural sectors where Hamara Bank has a strong presence. Merging with Apka Bank will provide better technology and financial boost to Hamara Bank.

Here the amalgamation is to take place between two banking companies.

The Reserve Bank has discretionary powers to approve the voluntary amalgamation of two Banking companies under the provisions of Section 44A of the Banking Regulation Act, 1949.

You are required to enumerate the provisions of Section 44A of the Banking Regulation Act, 1949 in a joint meeting of representatives of both the banks.

(*5 marks*)

(*iii*) Subodh Consumer Products Limited (SCPL) decided to demerge its food and beverages business into a separate entity, Subodh Foods Limited (SFL). The demerger allowed SCPL to concentrate on its core products line while its food and beverages business could be more effectively managed by SFL. The demerger took place within the meaning of Section 2(19 AA) of the Income-tax Act, 1961. N who was holding 100 shares in SCPL was allotted 100 shares in Subodh Foods Limited along with the shares in resulting company as per the swap ratio.

N seeks your advice to calculate the following as he intends to transfer some of his shares after demerger :

(*a*) Cost of acquisition of shares in the resulting company.

(*b*) Cost of acquisition of shares in the demerged company.

(*c*) Period of holding of shares of the resulting company.

(*5 marks*)

(*iv*) ABC Ltd., a company registered under the Companies Act, 2013, providing Information Technology & allied services, wants to merge with its USA based wholly owned holding company, Silicon Valley Inc. Managing Director of ABC Ltd. seeks your advice on the matter citing the recent amendments etc. if any.

(*5 marks*)

PART-II

3. (*a*) Newrotechnologies Limited is a tech company that needs to find out its valuation for next round of funding. To estimate its fair value, it is planning to use Market Comparable Approach, which involves comparing it with companies which are similar in size, industry and financial characteristics.

The chief financial officer has gathered the following information for this purpose :

Comparable Companies in the market :

Company A : P/E Ratio = 18

Company B : P/E Ratio = 20

Company C : P/E Ratio = 22

Company D : P/E Ratio = 21

The financials of Newrotechnologies Limited for the year ending 31st March, 2024 are as follows :

Net income is ₹ 20,00,000.

Total number of shares is 50,000

Using the above information, calculate the estimated price per share and estimated value of Newrotechnologies Limited.

(*5 marks*)

(*b*) (*i*) Ram purchased 100 shares of M/s. T Ltd, a listed company, @ ₹ 750/- per share on May 2, 2024. M/s T Ltd. declared 40% & 50% dividend on September 15, 2024 and on March 15, 2025 respectively. Market value of share of T Ltd. on May 2, 2025 is 1000/- per share.

Calculate the return of equity investment in T Ltd. (face value per share is ₹ 10/-)

(*ii*) "In order to ensure authenticity and to have a unique reference number of the valuation reports, it has been decided to provide a Valuation Report Identification Number (VRIN) for each valuation conducted under the code." Comment on the statement on the basis of recent IBBI circular.

(*5 marks*)

4. (*a*) PQR Ltd. is in the process of getting its securities listed on the stock exchange. The company needs to get the valuations done as per the requirements of SEBI. The Board of Directors have proposed the name of M/s Sunidhi and Associates, a partnership firm, to be appointed as the valuers for the above mentioned purpose. In the light of the provisions of Rule 3 of The Companies (Registered Valuers and Valuation) Rules, 2017, a partnership firm becomes ineligible to be appointed as registered valuer in circumstances stated in the above mentioned rule.

As the Company Secretary of PQR Ltd., state such circumstances to confirm that M/s Sunidhi and Associates do not fall under any of the ineligibility criterion.

(*5 marks*)

(*b*) Company X owns many businesses and it also operates a manufacturing division that manufactures and sells electronic devices.

Company Y is interested in acquiring the entire manufacturing division of company X that sells electronic devices as a going concern.

In the sale agreement, Company X transfers its entire manufacturing division of electronic devices, including all its assets and liabilities, to company Y.

No values are assigned to respective assets or liabilities of the manufacturing division. The lump sum consideration for the sale is agreed upon between Company X and Company Y.

In the background of the case, discuss the category of transaction between Company X and Company Y and also discuss rationale behind such transaction by Company X in general and process involved in such transfer.

(*5 marks*)

PART-III

5. (*a*) XYZ Limited, was undergoing a Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016. While the company was in CIRP, the Bombay Stock Exchange (BSE) sought to take a legal action against the company for non-compliance with the listing regulations. BSE wanted to recover the penalty amount from the Company failing which, the BSE warned the company of potential delisting and also suspending the trading of shares of XYZ Limited.

As the Resolution Professional (RP) of the XYZ limited (the Corporate Debtor), discuss, citing a relevant case law and provisions of the Insolvency and Bankruptcy Code (IBC), 2016, whether the BSE, as a stock exchange, could exercise its regulatory powers against a company undergoing insolvency proceedings ? How can the Bombay Stock Exchange recover the amount of penalty from XYZ Limited ?

(*5 marks*)

(*b*) An application filed by an operational creditor under Section 9 of the Insolvency and Bankruptcy Code (IBC), 2016, was admitted by National Company Law Tribunal (NCLT) and Mr. Goel has been appointed as the Interim Resolution Professional (IRP). Section 20 of the Code mandates Mr. Goel (IRP) to run management of operations of corporate debtor as a going concern. In the light of provisions of the Insolvency and Bankruptcy Code (IBC), 2016, mention the authorities available to IRP to run the business as a going concern in the above matter.

(*5 marks*)

(*c*) SPM bank extended credit facilities to Anuj Constructions (The Principal Borrower), a proprietary firm, in 2023. Gita Steel Limited (The Guarantor) provided guarantee for credit facilities provided to Anuj Constructions by the SPM bank. Anuj Constructions (The Principal Borrower), defaulted in the repayment of credit facilities and hence the facilities were declared as Non-Performing Assets. Anuj Constructions repeatedly assured the bank to repay the outstanding amount of ₹ 11,45,23,535, but failed and SPM bank issued notice to Anuj Constructions.

SPM bank also issued notice to Gita Steel Limited (The Guarantor) under Section 4(1) of the Insolvency and Bankruptcy Code (IBC), 2016, demanding the outstanding amount.

Failing to receive any positive response from either of the parties, the bank proceeded to file an application before NCLT under Section 7 of the Code for initiating CIRP proceedings against Gita Steel Limited.

The Board of Directors of Gita Steel Limited argued that under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016, an application can be filed by financial creditor only against the Corporate person.

Section 7 of the Code cannot be legitimately invoked by the bank against Gita Steel Limited (being a Corporate Debtor) concerning guarantee offered by it in respect of a credit facility of Anuj Constructions (The Principal Borrower), who had committed default and is not a corporate person within the meaning of the Code.

In the background of the matter, discuss "Corporate Person" and "Corporate Debtor" under the provisions of IBC and referring to the relevant case law, discuss the tenability of arguments put forward by the Board of Directors of Gita Steel Limited.

(*5 marks*)

(*d*) The Committee of Creditors (CoC) of Golconda Industries approved a resolution plan by voting share of 100% in voting held on 17.1.2024. Thereafter, X (the Resolution Professional) submitted the application for the approval of resolution plan before the Adjudicating Authority (AA). During the pendency of the application for approval of resolution plan before the AA, ex-promoter of Golconda industries submitted revised settlement proposal under Section 12 A of the Code and filed an application to NCLT seeking to keep the resolution in abeyance. The application filed by the ex-promoter was rejected by the NCLT. Hence, he filed an appeal before NCLAT against the NCLT order.

In the light of the provisions of the Insolvency and Bankruptcy Code, 2016, whether an application under section 12A of the Insolvency and Bankruptcy Code (IBC), 2016, can be entertained by NCLT after the approval of resolution plan by CoC and filing of application before NCLT for approval of resolution plan by the Resolution Professional ? Citing the relevant case law, discuss as to what will be the merit of appeal filed by the ex-promoter of Golconda Industries against the order of NCLT.

(*5 marks*)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (*a*) A director of a company in CIRP had moved the Hon'ble NCLT, Mumbai Bench, seeking the right to participate in the meetings of the CoC and access all the documents and/or information including the resolutions plans being discussed in the meetings of the CoC, for effective participation in the meetings.

The Hon'ble NCLT on August 1, 2018 held that the directors have the right to attend the CoC meetings as per Section 24 of the Code, however, the directors could not receive information that is considered confidential by the resolution professional or the CoC, including the resolution plans.

Thereafter, the Directors filed appeal before NCLAT for treating the papers as confidential by the RP. In the appeal, the decision of the NCLT was upheld by the NCLAT on August 9, 2018.

The director then moved the Supreme Court, challenging the decision of the appellate tribunal.

Decide the matter with reference to relevant case law.

(*5 marks*)

(*b*) "While the Insolvency professionals assist in the insolvency resolution proceedings envisaged in the Code, the Information Utility, on the other hand, collect, collate, authenticate and disseminate financial information." Enumerate the obligations of information utility as per provision of section 214 of IBC.

(*5 marks*)

(*c*) Agastu Industries Limited, a medium sized company had been facing financial difficulties for the past few years due to poor management and an inability to cope with its increasing operational costs. Also the company's funds were being used for personal expenses of the directors like purchase of high end vehicles and other non-business related expenditures. These actions led to a significant depletion of company's cash reserves. The company had to finally face a liquidation order from NCLT.

The NCLT appointed Mr. Jayant Nanda as liquidator to wind up the company and liquidate its assets.

However, it came to the light that Mr. Jayant Nanda had prior business relationship with one of the major creditors PQR Corporation and he is giving preferential treatment to PQR Corporation by prioritizing its claims over those of other creditors and possibly negotiating assets sales at lower prices to benefit PQR Corporation.

A group of creditors filed a petition in the Hon'ble Delhi High Court for removal of Mr. Jayant Nanda as the liquidator accusing him of conflict of interest. Discuss the validity of the petition in the light of the provisions of the Companies Act, 2013.

(*5 marks*)

(*d*) Bhawna Clothing Limited (The Corporate debtor) was placed under Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016 in Jan., 2024.

Mr. N was appointed as the Interim Resolution Professional (IRP) and the committee of creditors was also formed.

During the CIRP process, the IRP was required to send notices to the members of CoC, members of the suspended Board of Directors and other participants entitled to attend the meetings.

In April, 2024, Mr. Goswami, a participant other than member of CoC, raised an issue in the meeting of creditors that he had not received any prior notices of the CIRP meetings and questioned the legitimacy of decisions taken in the meetings he had missed.

Highlighting the provisions of Regulation 20 of the Corporate Insolvency Resolution Process Regulations relating to service of notice by electronic means, decide about the legitimacy of decisions taken in the meetings Mr. Goswami had missed. Is there any obligation on the part of IRP for updation of e-mail ID while serving notice by electronic means ?

(*5 marks*)

OR (Alternate question to Q. No. 6)

6A. (*i*) "To alleviate the compliance burden for Insolvency Professionals (IPs), a set of forms on an electronic platform has been created by the IBBI to capture the details of the voluntary liquidation process. These forms are vital for the voluntary liquidation procedure under the Insolvency and Bankruptcy Code (IBC), as they enable systematic and transparent record keeping and seamless reporting". Highlight the advantages and the documentation with timelines in view of the recent amendment via IBBI Circular dated 28th June, 2024.

(*5 marks*)

(*ii*) A company ABC Ltd. is undergoing a prepackaged insolvency resolution process under IBC, 2016. The company has appointed an Interim Resolution Professional (IRP) to oversee the insolvency process. The management of Corporate Debtor is concerned about their role and vesting of the management with IRP during the insolvency process. Discuss the provisions of Vesting management of corporate debtor with resolution professional, if any.

(*5 marks*)

(*iii*) Sujan Technologies Pvt. Ltd. faced serious allegations of financial mismanagement, excessive debts and non-compliance of statutory filings. The non-compliance issues led to an inspection and investigation being ordered by the Registrar of Companies (ROC). The inspection of the company by Registrar of Companies (ROC) was completed and investigation report was submitted. Severe irregularities relating to falsification of accounts was reported and hence prosecution under the Companies Act was initiated in the court of law against the directors. As the investigation of the Company is already complete, the Board of Directors of Sujan Technologies Pvt. Ltd filed an application for removal of name of the company from the Register of Companies (ROC). The company has not continued with any of its business or operation for a period of two immediately preceding financial years. The ROC rejected the application citing the provisions of Section 248 of the Companies Act, 2013.

Referring to the relevant provisions, discuss the tenability of the application filed with ROC for removal of name.

(*5 marks*)

(*iv*) Mr. X was appointed as a Liquidator in the liquidation process of ABC Limited. In the process, he is required to prepare a preliminary Report as per Regulation 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. Discuss contents of such Preliminary Report as well as timelines prescribed for the same.

(*5 marks*)

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536

Roll No. .....

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 16***

NOTE : *Answer* ***ALL*** *Questions.*

PART–I

1. Alkasa Lifesciences Limited (ALF Ltd.), a public limited company, is a healthcare conglomerate, with its operations in four major verticals–Pharmaceutical Manufacturing, Medical Equipment, Wellness and Nutrition Products and Diagnostics. ALF Ltd.'s, 75-year-old traditional Pharma business, is the backbone of the company. However, over the past few years, the company has expanded its operations through the Wellness and Nutrition division which has experienced rapid growth, driven by rising demand for preventive health products. Evercare Path Labs, a wholly owned subsidiary, is yet another diversification venture of ALF Ltd. which though is a high-growth unit but lacks synergy with the other pharma activities.

The stakeholders have raised concerns that the company's diversified structure might dilute the overall performance and valuation of the company. Investing too much in expansion without a clear strategy can make the business vulnerable to market changes or operational failures, increasing the risk of substantial financial losses. Hence, they suggest to shed off the non-core units to focus on core areas. But the management feels a strong sense of ownership and pride over the units they have personally developed and nurtured, making it difficult to let them go. Hence the suggestion of divestiture is completely unacceptable to them.

In response to this deadlock, the Board of Directors have hired Mr. Agrim Basu as their Strategic advisor for exploring strategic options to unlock the value of the high-growth divisions and improving focus on its core pharmaceutical operations. Mr. Basu has suggested a scheme explaining that the company may opt for a divestiture, capital restructuring, buyback and acquisitions/mergers as part of a strategic initiative to enhance shareholder value and optimize operational focus. Together, these steps will reflect proactive financial management and strategic clarity, positioning the company for sustainable long-term growth while maintaining investor trust and market competitiveness.

Convinced with the suggestions of Mr. Basu, the following scheme is formulated :

- Divest Evercare Path Labs or Separate Evercare Path Labs for value unlocking (via carve-out) as diagnostics business no longer aligns with ALF Ltd.'s long-term strategic direction.
- Use proceeds from above step to repay high-interest debt of ₹ 500 crore to improve debt-equity ratio and further support financial stability.
- Further, a buyback of shares under Section 68 of the Companies Act, 2013, utilizing ₹ 800 crores of the proceeds. Improved EPS from buyback may help in market perception during future takeover bids, potentially reducing acquisition cost.
- With remaining proceeds and a stronger financial position post-buyback, ALF Ltd. will be all set for mergers/acquisition.

The process of merging with another company or acquiring a company is complex. In addition to the legal ramifications, companies must be aware of the potential tax implications as well as ensuring that the terms of the deal benefit both parties.

ALF Ltd. has created a team of strategic advisors, lawyers and professionals to negotiate on their behalf in order to obtain the best possible deal within the framework of the applicable laws.

After rounds of deliberations and due diligence of various options proposed by the special team, ALF Ltd. selected Debonya Limited, for acquisition, as this was the company which could offer ALF Ltd., a growth potential to expand the market share, gain access to new R&D and automation processes, and above all achieve operational synergies in its core pharma manufacturing sector. Eventually ALF Ltd. aqcuired Debonya Limited in a business combination on 1st April, 2025.

Based on the above facts, answer the following questions :

(*a*) Stakeholders suggest that instead of diverting capital and effort into many different areas, the company should consolidate its resources and management focus more effectively into strengthening its core competencies whereas management does not want to leave their high growth hard earned units.

As their strategic advisor, you could remove this deadlock between management and stakeholders by explaining them the difference between full divestiture and an equity carve-out.

Which one out of the above did you suggest to unlock the value of ALF's high growth but non-core business unit—Evercare Path Labs, so that the decision is acceptable to both—stakeholders and management. Also explain how did you present the rest of your strategy to both of them to gain approval for debt restructuring, buyback and acquisition too.

(*5 marks*)

(*b*) As per the plan suggested by Mr. Agrim Basu, the company successfully used a part of the sale proceeds for the buyback under Section 68 of the Companies Act, 2013, complying with all regulatory provisions.

You as the head of legal department of ALF Ltd., need to draw the management's attention towards Regulation 11 of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018, that mandates the companies to extinguish and physically destroy securities certificates bought back.

(*5 marks*)

(*c*) Heading the special team assigned with the task of proposing and finalising a merger/ acquisition, you very well understand that there are host of factors from the economic, commercial and legal perspective, which require consideration before initiating a merger or amalgamation exercise. Create a detailed list of such factors before initiating the assigned task.

(*5 marks*)

(*d*) At the time of preacquisition legal due diligence of Debonya Limited by the special team, it came to light that Debonya Limited is facing a lawsuit filed by a customer alleging allergical nature of its products with a potential liability of ₹ 30,00,000. Hence, as part of the acquisition agreement, the sellers of Debonya Limited provided an indemnification to Alkasa Lifesciences Limited for the reimbursement of any losses greater than ₹ 12,00,000. At the acquisition date, Alkasa Lifesciences Limited recognises the fair value of the contingent liability of ₹ 30,00,000 in the acquisition accounting. Calculate the amount of indemnification asset while doing the acquisition accounting in Alkasa Lifesciences Limited. Also brief the management about the concept and treatment of indemnification asset and discuss under what circumstances such assets are recognized.

(*5 marks*)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (*a*) Vrisha Ltd., a company listed on the NSE has a total number of 11,00,00,000, issued and fully paid-up equity shares as on 31st May, 2025, out of which Retail and Other Public Shareholders hold 2,57,50,000 shares, Mutual Funds hold 40,00,000 shares, Foreign Portfolio Investors (FPIs) hold 32,50,000 shares and Insurance Companies hold 5,50,000 shares. Rest of the shares are held by Promoter and Promoter Group. Explain, how is the maximum permissible non-public shareholding derived, based on the minimum public shareholding requirement under the Securities Contracts (Regulations) Rules 1957 ("SCRR"). Also determine whether Vrisha Ltd. is compliant with the maximum permissible non-public shareholding norms. Support your answer with calculations.

(*5 marks*)

(*b*) There was an inter-se transfer of shares of 0.30% between 2 (two) promoters. However, as a result of the inter-se transfer, the shareholding of one of the promoters (i.e. the purchaser) ("Noticee") increased from 24.74% to 25.04%, thereby breaching the threshold limit of 25%, as provided under regulation 3(1) read with 3(3) of Takeover Regulations. The total shareholding of the promoter group did not change and it remained at around 45%. The Noticee argued that the above-mentioned acquisition does not trigger the applicability of either regulation 3(1) or 3(3) of the Takeover Regulations, as the said acquisition of shares by the Noticee was an inter-se transfer among the promoter entities and the overall shareholding of the promoter group, of which the Noticee is a part, remained unchanged after the said acquisition. Decide the matter with reference to a decided case law.

(*5 marks*)

(*c*) Under the framework of Sections 230 to 232 of the Companies Act, 2013, in case of a merger or amalgamation, the meetings of shareholders and creditors are conducted after obtaining and in compliance with the NCLT's directions. Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case maybe, the Second Motion Application for sanction of the scheme praying for appropriate orders and directions is filed as per section 230 read with section 232 of the Companies Act, 2013 [Rule 15 of the Companies (Compromise, Arrangement and Amalgamation) Rule, 2016].

As the advisor to the management, explain who is responsible for filing the Second Motion Application, and within what time frame must it be filed ?

(*5 marks*)

(*d*) Under the Companies Act, 2013, the concept of a "small company" was introduced to promote ease of doing business for entities with limited financial and operational scale. You are a large consulting firm and tasked with assessing whether the following companies qualify as "small companies" for the financial year 2024-25, as per Section 2(85) of the Companies Act, 2013 (post-September 2022 amendment) so as to enable them to enjoy various compliance relaxations and benefits. Give reason for your classification.

Name of the Company	Paid up capital (in crores)	Turnover (in crores)	Notes relating to the relevant company
Agoya Pvt. Ltd.	4	47	Wholly owned by family members.
Excelibur Services Pvt. Ltd.	3.96	36.6	51% owned by Joy Pvt. Ltd.
Glider Pvt. Ltd.	2	25	A company incorporated under a Special Act
Jamna Pvt. Ltd.	4	40	Registered under Section 8
Gorda Private Limited	3.66	38.2	Wholly owned by family members.

(*5 marks*)

OR (Alternate question to Q. No. 2)

2A. (*i*) "While the Companies Act, 2013, provides the enabling provision for cross border mergers, such mergers trigger a range of compliance obligations under other key legislations also, including the Foreign Exchange Management Act (FEMA), 1999 and the Competition Act, 2002."
Justify the statement explaining how these laws regulate the cross-border mergers beyond the provisions of the Companies Act, 2013.

(*5 marks*)

(*ii*) "Demerger is a method of corporate restructuring by which a business unit or subsidiary of a company becomes an independent entity from its parent's entity. The parent firm distributes shares of subsidiary to its shareholders through a stock dividend. In most cases demerger unlocks hidden shareholder value". Comment on applicability of IND-AS 103 for Demerger Transactions.

(*5 marks*)

(*iii*) Governa Ltd. is a company with two classes of equity shareholders : Class A (founders and promoters) and Class B (public investors). Both classes initially held equal voting rights and dividend entitlements. However, the Board of Directors pass a resolution to vary the rights of Class B shareholders—reducing their voting power and prioritizing dividend pay-outs to Class A shareholders.

A group of Class B shareholders, holding 12% of the total equity, challenges this move, claiming the variation in unfair and prejudicial. The company argues that the changes are necessary for long-term strategic control and investor confidence.
As a legal advisor to the minority Class B shareholders, critically analyze the legal framework of the Companies Act, 2013 governing the variation of rights of equity shareholders.

(*5 marks*)

(*iv*) M/s W Inc. a foreign company holds 100 shares in M/s I Ltd., an Indian company, @ ₹ 10 per share for last five years and the market value of such shares is ₹ 3500/- per share, and transfers the same, in case of a demerger, to another resulting foreign company M/s R Plc., explain how such transaction will be taxed for the purpose of capital gain under section 45 of Income Act, 1961.

(5 marks)

PART-II

3. (*a*) Mr. X, a registered valuer, takes assignment of M/s ABC Ltd. for valuation of certain property of the company on 15th March, 2025 at fees of ₹ 5 lakhs. Mr. X, submits his valuation report in April, 2025 and fees cleared in June, 2025. Subsequently, it was discovered that Mr. Y, father of Mr. X, was a director of the company, retired on 28th February, 2023. Vice President Legal wants to file a suit for such non-disclosure of interest and wants refund of fees, but the Finance director is of an opinion that as it is more than two years, no action can be taken. Advice the company citing the provisions of Section 247 of the Companies Act, 2013.

(*5 marks*)

(*b*) XYZ Tech Services, a mid-sized IT support and software solutions provider, has decided to explore the possibility of selling the business to a strategic buyer or investor. With stable revenue streams, consistent profits, and a growing customer base, the owners believe it is the right time to capitalize on the company's value. To determine a fair selling price and support negotiations, the company engages you as a professional valuation expert to conduct a business valuation using the Income Approach—specifically the Discounted Cash Flow (DCF) method.

XYZ Tech Services is projected to generate the following cash flows during the next five years :

Year	Forecast Free Cash Flows (in ₹)
2025	14,00,000
2026	15,60,000
2027	18,20,000
2028	20,90,000
2029	23,50,000

Assuming the discount rate to be 10% and the terminal value of the business as ₹ 1,10,00,000, compute the estimated valuation of XYZ Tech Services.

Assuming the exit year is Year 2029.

PV Factors @ 10% :

Year 1 : 0.909	Year 2 : 0.826	Year 3 : 0.751	Year 4 : 0.683	Year 5 : 0.621

(5 marks)

4. (*a*) The cost approach of business valuation is useful, for asset intensive firms, valuing holding companies as well as distressed entities that are not worth more than their overall net tangible value. Comment on the statement and discuss the circumstances where the cost approach is used by the valuer for business valuation.

(5 marks)

(*b*) A Ltd. is considering the acquisition of B Ltd. and management estimates that the acquisition will create a synergy worth ₹ 220 lakhs. The following information is provided :

Particulars	A Ltd.	B Ltd.
Value of the company ₹ (Lakhs)	3840	1050
Number of shares (Lakhs)	160	70
Value per share (₹)	24	15

Management of A Ltd. offers cash of ₹ 17/- per share to B Ltd. Determine consideration paid, acquisition premium (i.e., gain of B Ltd.), acquirer's gain (i.e., gain of A Ltd.)

(*5 marks*)

PART-III

5. (*a*) Guari Ferros Pvt. Ltd. (GFPL), a mining company based in Madhya Pradesh, held a mining lease over 500 hectares of iron ore-rich land. The lease was granted under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). The lease was originally due to expire in June 2025, though eligible for extension through a mandatory extension approval from the State Government for continued operations. Facing significant financial stress due to market downturns and loan defaults, GFPL was admitted into a Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016, after a Section 7 application was filed by a bank in October 2024. The NCLT Bench appointed an Interim Resolution Professional (IRP) to oversee the management of the company during CIRP.

Recognizing that the mining lease was a key asset necessary for the revival of the company, the IRP submitted a formal request for its extension to the State Government of Madhya Pradesh. However, the State rejected the application, citing environmental violations, breach of compliance norms, and public interest concerns under the MMDR Act. This decision effectively rendered the mining operations unviable, threatening the success of the CIRP.

The IRP approached the NCLT, seeking to invalidate the State's decision, arguing that the rejection violated the spirit of the moratorium under Section 14 of IBC and hampered the possibility of a successful resolution. The State, on the other hand, contended that lease renewals under the MMDR Act are sovereign in nature and do not fall under the jurisdiction of NCLT/NCLAT.

In the background of the matter, discuss the tenability of arguments put forward by the IRP of Guari Ferros Pvt. Ltd. (GFPL), under the provisions of the Insolvency and Bankruptcy Code, 2016, citing a relevant case law.

(5 marks)

(*b*) The petitioner, Manwaari Lal, acting through his proprietary concern Manwaari Photo Co., filed a petition under Section 7 of the IBC seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against Nobivio Infotech Pvt. Ltd.

The above dispute arose out of an agreement whereby the petitioner was appointed as a non-exclusive distributor for the sale and promotion of mobile phone products of Nobivio Infotech Pvt. Ltd. Under the terms of the agreement, the petitioner was required to pay a security deposit of ₹ 5 crore, which was refundable upon termination of the agreement. Crucially, the agreement stipulated that the deposit would accrue interest at the rate of 20% per annum. The relationship between the parties later on deteriorated, and eventually the distribution agreement was terminated. Following the termination, the petitioner formally demanded the refund of the security deposit along with interest. However, Nobivio Infotech Pvt. Ltd. allegedly failed to honour the repayment obligation, leading the petitioner to issue a demand notice and subsequently file a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, before the National Company Law Tribunal (NCLT). New Delhi Bench.

The petitioner asserted that the failure to return the deposit constituted a default in repayment of financial debt, and thus sought initiation of the Corporate Insolvency Resolution Process (CIRP).

In response, Nobivio Infotech Pvt. Ltd. disputed the classification of the amount as "financial debt," claiming that the deposit was commercial in nature and not a borrowing. Quoting the definition of "Financial Debt" under the provisions of Insolvency and Bankruptcy Code, 2016, discuss whether an interest-bearing security deposit made under a commercial distribution agreement qualifies as 'financial debt' under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, thereby enabling the creditor to initiate the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor ?"

(5 marks)

(*c*) IBBI has collaborated with the Indian Banks' Association (IBA) to facilitate the auction of assets through the eBKray platform which is presently owned and managed by PSB Alliance Private Limited (a consortium of 12 public sector banks). eBKray has been conducting auctions for assets mortgaged to public sector banks under the SARFAESI Act for the past five years. Comment with reference to IBBI Circular dated 29th October, 2024.

(5 marks)

(*d*) "The moratorium under the Insolvency and Bankruptcy Code (IBC) isn't absolute and has exceptions. Specifically, proceedings against personal guarantors, criminal cases involving fraud or misrepresentation, and writ petitions before High Courts are not covered by the moratorium. Additionally, certain transactions or agreements may be excluded by the Central Government's notification in consultation with regulators." What are the Exceptions to Moratorium pursuant to Section 14(3) of the IBC 2016 ? Does this provision apply to personal guarantor ?

(*5 marks*)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (*a*) Angad had taken a business loan of ₹ 70 lakhs from DNF Bank Ltd., secured by his commercial property. His business faced a tough time due to stiff competition and global recession and hence he could not repay his instalments in time. Due to continued default in repayment, DNF Bank Ltd. classified the loan as a Non-Performing Asset (NPA) and decided to exercise its rights under the SARFAESI Act, 2002. DNF Bank Ltd. assigned the loan (along with the secured interest) to an Asset Reconstruction Company (ARC) named Faith Assets Ltd. under Section 5 of the SARFAESI Act.

DNF Bank Ltd. did not issue any notice to Mr. Angad, informing him about the assignment of the debt to Faith Assets Ltd. (ARC).

After a recent successful order, Angad managed to arrange ₹ 15 lakhs to partly repay his loan and has come to pay the money to DNF Bank Ltd. As an advisor to DNF Bank, advise the Branch Manager whether the bank can accept this money from Angad and if so, in what capacity ? Answer the question explaining the provisions of Section 6 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(5 marks)

(*b*) Authorised representatives are the agents/trustees of the creditors/class of creditors they represent and must act in accordance with their instructions.

Enumerate the role and duty of the AR (under Section 21(6), Section 21(6A), or Section 24(5)) as set out in Section 25A of the Insolvency and Bankruptcy Code (IBC), 2016.

(5 marks)

(*c*) ABC Industries Pvt. Ltd., a small manufacturing company, has defaulted on loan repayments to its financial creditor, Zeal Bank Ltd. However, due to its viability and ongoing operations, Zeal Bank proposes to initiate a Pre-Packaged Insolvency Resolution Process (PPIRP) under Chapter III-A of the IBC, 2016. Upon admission of the application by the Adjudicating Authority, the process formally commences. The Resolution Professional (RP), appointed as per the Code, is now required to comply with certain immediate obligations under the law in relation to public announcement.

Enumerate the provisions related to declaration of moratorium and public announcement during pre-packaged insolvency resolution process as per Section 54E of the Insolvency and Bankruptcy Code (IBC), 2016.

(5 marks)

(*d*) SA Limited ("Respondent") required commercial supply of natural gas, the Respondent and SG Limited ("Appellant") entered into a gas sales agreement ("GSA"), where under the Appellant had the obligation to supply natural gas. In the meanwhile, the Respondent approached Board for Industrial and Financial Reconstruction ("BIFR") to get it declared as a 'sick unit' in terms of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"), which was allowed by BIFR.

However, shortly thereafter, on December 1, 2016, SICA was repealed and IBC was enacted. The Appellant issued a demand notice on April 1, 2017 under Section 8 of IBC, demanding payment of operational debt. The respondent declined its liability to pay the amount demanded. The Appellant filed an application under Section 9 of IBC ("Application") before National Company Law Tribunal, Ahmedabad ("NCLT") seeking initiation of corporate insolvency resolution process ("CIRP") of Respondent. NCLT dismissed the Appellant's Application on 2 (two) grounds—(a) Application being barred by limitation, and (b) existence of a 'pre-existing dispute' between the parties. Aggreived by the Order of NCLT, the Appellant preferred an appeal before the National Company Law Appellate Tribunal ("NCLAT"), which was also dismissed. Therefore, the Appellant appealed before the Supreme Court.

(1) Whether, in computation of the period of limitation in an application under Section 9 of IBC, the period during which the operational creditor's right to proceed against or sue the corporate debtor that remained suspended by virtue of Section 22(1) of SICA can be excluded, as provided under Section 22(5) of SICA ?

(2) Whether there was a pre-existing dispute between the parties, warranting dismissal of Application under Section 9 of IBC at the threshold ?

Decide the matter with reference to a case law.

(*5 marks*)

OR (Alternate question to Q. No. 6)

6A. (*i*) What are the Reliefs that may be granted upon Application for Recognition of a Foreign Proceeding as per Article 19 of UNCITRAL Model Law ? Enumerate the effects of Recognition of a foreign main Proceeding as per Article 20 of UNCITRAL Model Law.

(5 marks)

(*ii*) Anuja Tools Pvt. Ltd., a registered MSME, is facing severe cash flow issues and wants to initiate a Pre-Packaged Insolvency (PPIRP), a cost-effective and speedy resolution process. They engage Mr. Yugam Sharma, a registered IP, as their proposed RP.
Section 54B outlines the duties of an Insolvency Professional (IP) who is proposed to be appointed as the Resolution Professional (RP) in a PPIRP. These duties are carried out before the application is filed with the Adjudicating Authority (NCLT). The section ensures that only viable cases reach the tribunal, and necessary due diligence is done to prevent abuse of the process.
Elucidate the duties of Mr. Yugam Sharma under Section 54B(1) of the Insolvency and Bankruptcy Code, 2016.
Also mention at what point will his duties under Section 54B(1) come to an end ?

(5 marks)

(*iii*) Marina Tech LLP was incorporated in 2019 by three partners, Mr. A, Ms. B, Mr C to provide technology consulting services.
By 2024, due to lack of business activity and sustained financial losses, the partners decided to discontinue operations.
Believing that the LLP had no outstanding liabilities, they opted for voluntary strike-off under Rule 37(1)(b) of the LLP Rules, 2009. They passed a resolution for strike-off, filed Form 24 with the Registrar of Companies (ROC), submitted affidavits declaring no pending liabilities, attached a CA-certified Statement of Accounts showing zero assets and dues, executed indemnity bonds agreeing to indemnify the ROC against future claims.

In March 2025, after public notice and no objections, Marina Tech LLP was officially struck off from the register. Two months later, a vendor, New IT Solutions, sent an email to all the designated partners claiming that payment of ₹ 9 lakhs for software licenses supplied in 2023 has not been made despite repeated reminders. The directors replied that the LLP is no more in existence and hence they are not liable to make the payment now. Eventually, New IT Solutions approached the NCLT for the same. The creditor presented email records, an invoice, and delivery conformations.

Comment in the light of provisions of The Limited Liability Partnership Act, 2008 read with rule 37 of the Limited Liability Partnership Rules, 2009 whether the designated partners are still liable to make payment to New IT Solutions ?

(5 marks)

(*iv*) Tripti Organics Ltd., a company engaged in manufacturing tools and small machines, used in organic farming, was admitted into Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code (IBC), 2016, on 15th January 2025, following a default of ₹ 112 crore to its financial creditors.

The Resolution Professional (RP), appointed by the NCLT, invited resolution plans and received one plan—from Tools and Tech Pvt. Ltd.

The resolution plan outlined the measures for asset maximization. The resolution plan also included a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. The plan also demonstrated compliance with all provisions of the law, as specified by the Board. The plan clearly demonstrated that it is feasible and viable and addressed the root cause of the default.

The COC (Committee of Creditors), with 86% voting in favour, approved the plan and submitted it to the Adjudicating Authority (NCLT) for approval.

However, the resolution plan was rejected by the NCLT as it did not provide for the following :

(*a*) the term of the plan and its implementation schedule;

(*b*) the management and control of the business of the corporate debtor during its term; and

(*c*) adequate means for supervising its implementation.

Tools and Tech Pvt. Ltd. contented that the rejection by NCLT for such shortcomings is unfair and unjustified and intends to file an appeal with NCLAT. As a counsel for Tools and Tech Pvt. Ltd., discuss whether the rejection by NCLT is valid ? What is the best course of action available to Tools and Tech Pvt. Ltd. in such scenario ?

(5 marks)

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Roll No. .....

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 16***

NOTE : *Answer* ***ALL*** *Questions.*

PART–I

1. The Indian healthcare sector is undergoing rapid consolidation. ‘‘Aarogya Healthcare,’’ a large, publicly listed hospital chain with a strong presence in South India, is looking to expand its reach and service offerings. They have identified ‘‘Swasth Jeevan Clinics,’’ a smaller but well-regarded chain of clinics specializing in primary care and diagnostics, as an attractive acquisition target. Swasth Jeevan Clinics has a strong brand reputation in Western India and a loyal patient base.

Aarogya Healthcare believes that acquiring Swasth Jeevan Clinics will :

- Expand its geographic footprint into Western India.
- Diversify its service offerings into primary care and diagnostics.
- Gain access to Swasth Jeevan Clinics’ established patient base and brand.
- Achieve synergies through economies of scale and shared resources.

The proposed transaction is structured as an amalgamation, where Swasth Jeevan Clinics will merge into Aarogya Healthcare.

Key Individuals :

- **Dr. Lakshmi Reddy :** CEO of Aarogya Healthcare
- **Mr. Sanjay Desai :** CFO of Aarogya Healthcare
- **Dr. Priya Sharma :** CEO of Swasth Jeevan Clinics
- **Mr. Rohan Verma :** Lead Partner at ''Verma and Associates,'' the investment bank advising Aarogya Healthcare.

(*a*) Mr. Rohan Verma from Verma & Associates is preparing a presentation for Dr. Lakshmi Reddy and Mr. Sanjay Desai on the strategic rationale for the acquisition and the key areas of due diligence.

- Explain three potential synergies that Aarogya Healthcare could achieve through the acquisition of Swasth Jeevan Clinics. Provide examples that are specific and relevant to the healthcare sector only.
- Identify two key areas of due diligence that Aarogya Healthcare should conduct on Swasth Jeevan Clinics beyond the standard financial due diligence. Explain why each area is important in this specific acquisition scenario.

(*5 marks*)

(*b*) Aarogya Healthcare is considering offering a combination of cash and stock to acquire Swasth Jeevan Clinics.

- Discuss two advantages and two disadvantages of using a stock component in the acquisition offer from Aarogya Healthcare's perspective.

- What factors should Mr. Sanjay Desai, the CFO of Aarogya Healthcare, consider when determining the appropriate exchange ratio for the stock component of the deal ?

(*5 marks*)

(*c*) The amalgamation of Aarogya Healthcare and Swasth Jeevan Clinics will require regulatory approval.

- Identify two key regulatory bodies in India that would likely need to approve this transaction.
- Explain one potential legal challenge that could arise during the amalgamation process and suggest a strategy to mitigate it.

(*5 marks*)

(*d*) Dr. Priya Sharma, the CEO of Swasth Jeevan Clinics, is concerned about the integration process and ensuring a smooth transition for her employees and patients.

- Identify two potential cultural differences that could exist between Aarogya Healthcare and Swasth Jeevan Clinics.
- For each cultural difference, suggest a specific strategy that Dr. Lakshmi Reddy, the CEO of Aarogya Healthcare, could use to promote a successful integration and minimize disruption.

(*5 marks*)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (*a*) Comment (with reasons) whether a scheme of merger or amalgamation under section 233 of the Companies Act, 2013, may be entered between the following companies vide the recent notification of The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 (Notification G.S.R. 603(E) dated 4th September, 2025) :

(*i*) ABC Private Limited, company recognized by the Department for Promotion for Industry and Internal Trade (DPIIT), incorporated for 5 years, have an annual turnover under ₹ 51 crore, and work toward innovation or improvement of products/processes with XYZ Private Limited, another company recognized by the Department for Promotion of Industry and Internal Trade (DPIIT), incorporated for 9 years, have an annual turnover under ₹ 91 crore, and work toward innovation or improvement of products/processes;

(*ii*) DEF Private Limited, company recognized by the Department for Promotion of Industry and Internal Trade (DPIIT), incorporated for 9 years 9 months, have an annual turnover under ₹ 95 crore, and work toward innovation or improvement of products/processes with XYZ Ltd, having paid up capital of ₹ 4.5 crore & turnover ₹ 49 crore;

(*iii*) QWE Private Limited, unlisted company, with aggregate loans/deposits of ₹ l5l crore, no default in repayment, with IOP Private Limited, another company without profit motive, designed to promote commerce, art, science, etc.

(*iv*) ABC Ltd. (listed & transferor) with its subsidiary company MNP Ltd. (unlisted & transferee);

(*v*) ABC Ltd. (unlisted & transferor) with MNP Ltd. (unlisted & transferee), both are subsidiary of XYZ Ltd.

(*5 marks*)

(*b*) Promoters (acquirers) of ABC Private Ltd. hold 85% share-holding and further acquires another 6% from the market @ ₹ 120 per share; bringing their holding to 91%, they shall trigger a buyout of the remaining 9% minority shares; Book value of the shares is ₹ l05; Earning per share is ₹ 10 and price earnings ratio is l5; Determine the final offer price of shares the registered valuer should fix considering the provisions of the Rule 27 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for minority shares under Section 236.

(*5 marks*)

(*c*) Due Diligence is an investigation or audit of a potential investment. It seeks to confirm all material facts in regard to a sale. It is a way of preventing unnecessary harm/ hassles to either party involved in a transaction. Briefly explain different types of due diligence that are typically conducted during a Mergers & Acquisitions (M & A) transaction.

(*5 marks*)

(*d*) Restrurcturing aims at improving the competitive position of an individual business and rnaximizing its contribution to corporate objectives. It also aims at exploiting the strategic assets accumulated by a business i.e., monopolies, goodwill, exclusivity through licensing,

etc. to enhance the competitiveness advantages. Thus restructuring helps in bringing an edge over competitors. Indian technology majors have embarked upon the process of restructuring and focusing on three core areas Cloud, agile and automation. Mention any five examples of technology restructuring in India.

(*5 marks*)

OR (Alternate question to Q. No. 2)

2A. (*i*) X Ltd. makes a bid to purchase Company Y Ltd. Y Ltd. rejects the bid and thereafter used a strategy against X Ltd. to stop the acquisition, Y Ltd. sold off its cement, chemical, and aluminium divisions and borrowed over ₹ 100 Crore, effectively hurting its own financial position to successfully ward off the takeover. What is the name of this strategy ? What are the risk and consequence of this strategy ?

(*5 marks*)

(*ii*) ABC Ltd. wanted to buy back its shares and provided the following information as on 31st March, 2026 : 60,000 equity shares of ₹ l00 each : General Reserve – ₹ 36,00,000 : P & L (Cr) ₹ 40,00,000; Security Premium ₹ 4,00,000; Secured Loans ₹ 40,00,000; Unsecured Loans ₹ 20,00,000; Offer Price ₹ 250; Determine the maximum quantum of buy-back (in amount as well as number of shares) as per provision of section 68 of the Companies Act, 2013.

(*5 marks*)

(*iii*) StellarTech, a privately held company specializing in innovative battery technology for electric vehicles, has experienced rapid growth in recent years. Founded by Ava Sharma and Ben Carter, StellarTech has developed a ground-breaking battery with significantly improved energy density and charging speed. However, to scale up production and meet growing demand, StellarTech requires substantial capital investment.

NovaCorp, a publicly listed company in the renewable energy sector, has struggled to maintain profitability and relevance in the face of increasing competition. Catherine Dubois, NovaCorp's CEO, recognizes the need for a strategic shift and is actively seeking opportunities to revitalize the company.

StellarTech and NovaCorp have identified a potential reverse acquistion as a mutally beneficial solution. StellarTech would gain access to the public markets and NovaCorp's listing, while NovaCorp would acquire a promising technology and a new growth engine. The proposed deal would result in StellarTech's shareholders owning 70% of the combined entity, with Ava Sharma becoming the CEO of the newly formed company, "StellarNova Technologies"

From StellarTech's perspective, what are the primary reasons for considering a reverse acquisition with NovaCorp instead of pursuing a traditional Initial Public Offering (IPO) ? Identify and analyse the key risks associated with this reverse acquisition for both StellarTech and NovaCorp.

(*5 marks*)

(*iv*) Company A merges with Company B.

- The companies sign the agreement on January 1, 2026.
- The board decides to set the financial transfer date as April 1, 2025 (beginning of the financial year for accounting convenience).
- Legal approvals from the NCLT are obtained, and the final filing with the RoC happens on June 1, 2026.

What are the appointed and effective dates of this merger ? Company A earns a profit of ₹ 15 Lakh in the period between of April, 2025 to May 2026, which company shall take into account of this profit and why ? What is the difference between the appointed date and effective date ?

(*5 marks*)

PART-II

3. (*a*) "Sunrise Technologies" (target company), a privately held software development firm, is being acquired by "Global Innovations" (acquiring company), a publicly listed technology conglomerate. Both companies are based in India. Priya Sharma, the CFO of Global Innovations, needs to determine a fair exchange ratio for the share swap.

Information Available :

- Financial statements for both companies are available.
- Industry standards and regulatory requirements are understood.
- Global Innovations plans to use a combination of the income approach (Discounted Cash Flow) and market value approach (comparable company analysis) for valuation.
- Strategic fit and potential synergies have been identified as significant factors.

You, being Priya, considering the planned acquisition of Sunrise Technologies by Global Innovations, outline your end-to-end valuation process from gathering data to justifiable exchange ratio, for Board approval.

(*5 marks*)

(*b*) Examine whether ABC Private Limited, set up for rendering professional or financial services, including valuation services, can get itself registered as a registered valuer in the following (independent) cases under the The Companies (Registered Valuers and Valuation) Rules, 2017 :

(*i*) XYZ Pvt. Limited holds 50% of the voting power of ABC Pvt. Limited and has control over the composition of board of directors of the company;

(*ii*) ABC Private Limited has only two directors and all the directors are registered valuers.

(*iii*) Ethical track record, honesty, and trustworthiness of A, one of directors, of ABC Private Limited, are not good.

(*5 marks*)

4. (*a*) A company is selling a division (Slump Sale) for a lump sum consideration.

Data :

- Book Value of Assets : ₹ 100 Lakhs
- Revalued Market Value of Assets : ₹ 150 Lakhs
- Liabilities to be transferred : ₹ 40 Lakhs
- Synergy gains expected : ₹ 10 Lakhs

Compute the Adjusted Net Assets Value and Minimum Sales Consideration.

(*5 marks*)

(*b*) Company A is merging with Company B, determine a fair exchange ratio based on Net Asset Value (NAV) and Earnings per Share (EPS).

Particulars	**Company A (Acquirer)**	**Company B (Target)**
Equity Shares	10,00,000	5,00,000
Net Assets (Book)	₹ 50,00,000	₹ 20,00,000
Fair Value of Assets	₹ 60,00,000	₹ 30,00,000
Net Profit (PAT)	₹ 10,00,000	₹ 4,00,000
Market Price per Share	₹ 100	₹ 60

(*5 marks*)

PART-III

5. (*a*) A company, ''ABC Ltd.'', contributed ₹ 10 Lakhs to the Insolvency and Bankruptcy Fund to support the corporate restructuring framework, as enabled under Section 224 of the IBC, 2016. A financial creditor initiates Corporate Insolvency Resolution Process (CIRP) against ABC Ltd. due to default. During the CIRP, ABC Ltd. faces a severe cash crunch, unable to pay crucial salary dues to its labourers, risking the preservation of its manufacturing unit. Advice the company about the options available in this circumstance. Which are the amounts credited for the creation of Insolvency and Bankruptcy Fund ?

(*5 marks*)

(*b*) ''Tech Growth Pvt. Ltd.'' is undergoing liquidation by the NCLT. A forensic audit reveals that Mr. Sharma, a director and major shareholder (contributory), has trnasferred ₹ 5 crores of company funds to his personal offshore account.

The Liquidator issues a notice for Mr. Sharma to appear and explain the transactions and pay the calls due on his shares.

Mr. Sharma ignores the summons and books a flight to Dubai, intending to flee India. What courses of action is available under the provisions of section 301 of the Companies Act, 2013 ?

(*5 marks*)

(*c*) A (Individual Insolvency Professional), is associated for last 10 years in the field of Insolvency Professional.

Current Assignment Load as on 1st January 2026 as follows :

3 **Liquidations** : Companies L_1, L_2, L_3 (admitted Claims of ₹ 700, 750 & 1000 Crore)

2 **RPs** : Companies R_1, R_2 (admitted Claims of ₹ 800, 950 Crore)

2 **IRPs** : Companies I_1, I_2 (admitted Claims of ₹ 1050, 1100 Crore)

Scenario A : New Assignments Offered from T Group

A is asked to act as RP for new three companies, admitted Claims ₹ 750, 850, 950 Crore.

Scenario B : New Assignments Offered from R Group

A is asked to act as Liquidator for a new three companies with admitted Claims ₹ 900, 950, 1050 Crore.

Scenario C : New Assignments Offered from U Group

A is asked to act as Liquidator for a new two companies with admitted Claims ₹ 1050, 1100 Crore.

Advice A (IP) which group's offer of assignments can be accepted ?

(*5 marks*)

(*d*) ACIL ("Corporate Debtor") was admitted into Corporate Insolvency Resolution Process ("CIRP") under the IBC by the NCLT.

The Resolution Plan submitted by RF Limited ("Successful Resolution Applicant/SRA") was approved by the Committee of Creditors (CoC) for the Corporate Debtor. Accordingly, the Resolution Professional filed an application under Section 30(6) of IBC before the NCLT, seeking approval of resolution plan.

On 01.09.2021, the NCLT kept the approval of SRA's Resolution Plan in abeyance and directed the Official Liquidator (OL) to provide exact figures/value of assets. The SRA filed an appeal before the National Company Law Appellate Tribunal ("NCLAT") against the order dated 01.09.2021.

The main issue before the Supreme Court was regarding the jurisdiction of the NCLT's to order a revaluation when there were no objections raised regarding the Resolution Plan's Approval process. The Court had the question of whether the NCLT & NCLAT have overstepped their powers in overlooking the decision of the CoC (Committee of Creditors).

Discuss whether the NCLT & NCLAT have overstepped their powers in overlooking the decision of the CoC, based on a decided case law.

(*5 marks*)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (*a*) The enactment of the Insolvency and Bankruptcy Code (IBC) has impacted corporate governance and the rule of law in India. Discuss this impact with reference to the case of *Arun Kumar Jagatramka v. Jindal steel and Power Ltd*, particularly regarding the shift in control, the time-bound resolution process, and the role of the Committee of Creditors (CoC) ?

(*5 marks*)

(*b*) A corporate debtor is a specialized manufacturing unit with valuable machinery but poor cash flow. Instead of selling the machinery, the CoC uses 39BA (1) to recommend that the RP invite a ''compromise'' arrangement where the current promoter pays off 60% of debt over 2 years, allowing the company to stay operational. Prepare a note on Assessment of Compromise or Arrangement as per Regulation 39BA (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(*5 marks*)

(*c*) In the context of cross-border insolvency proceedings under the Insolvency and Bankruptcy Code (IBC), what is the significance of determining the ''Centre of Main Interests'' (COMI) of a corporate debtor, and how does the COMI influence the recognition and enforcement of foreign insolvency proceedings in India ?

(*5 marks*)

(*d*) Imagine that you're advising a Government that wants to improve its insolvency and creditor rights system to boost economic growth and attract more investment. Based on the World Bank's principles, what specific, actionable steps should they take to strengthen :

(1) **The overall legal framework for lending and debt recovery ?** (Focus : Compatible Credit and Enforcement Systems)

(2) **The system for registering and enforcing claims on assets used as security for loans ?** (Focus : Collateral Systems)

(3) **The courts and processes used to resolve insolvency cases and enforce creditor rights ?** (Focus : Enforcement Systems)

(4) **The availability and reliability of information about borrowers' creditworthiness ?** (Focus : Credit Information System)

(5) **The options for companies and creditors to negotiate solutions outside of formal court proceedings ?** (Focus : Informal Corporate Workouts)

(*5 marks*)

OR (Alternate question to Q. No. 6)

6A. (*i*) Collins & Aikman (C&A), an automotive supplier, operated as a multinational group. It entered insolvency with its main insolvency proceedings initiated in the United States (the Center of Main Interests-COMI).

Simultaneously, multiple non-main proceedings were initiated in several European jurisdictions (including UK, Germany, and France) where C & A had subsidiaries and assets.

Each national court had the power to manage the assets within its jurisdiction. This fragmentation posed a risk of dismantling the company's European network, making a groupwide restructuring impossible.

Therefore, the company needs such coordination among all the proceedings, how should the company proceed with to manage this problem.

(*5 marks*)

(*ii*) Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, mandates that a liquidator must constitute a Stakeholders' Consultation Committee (SCC) to ensure transparency, accountability, and creditor participation, with voting rights proportional to admitted claims.

(*a*) What is the time limit of forming the SCC and by whom ?

(*b*) What is composition of SCC and on which matters it advices ?

(*5 marks*)

(*iii*) Recognizing the need to alleviate the compliance burden for Insolvency Professionals (IPs), the IBBI has issued a circular dated June 28, 2024, concerning the filing of forms to monitor voluntary liquidation processes under the Insolvency and Bankruptcy Code (IBC) and the regulations made thereunder.

(*a*) What are the advantages of the new forms introduced or modified by this circular ?

(*b*) What is the scope and coverage of the information required in these forms ? (i.e., What specific aspects of the voluntary liquidation process do these forms address ?)

(*c*) What are the prescribed timelines for filing each of the forms introduced or modified by this circular ?

(*5 marks*)

(*iv*) M/s. Agarwal Textiles Ltd., a company based in Surat, Gujarat, faced significant financial distress due to a downturn in the textile industry and accumulated debts of ₹ 500 crore. Investigations revealed that during the period of 2015-2018, before the initiation of the Corporate Insolvency Resolution Process (CIRP), Mr. Rajesh Agarwal, the then Managing Director, had allegedly engaged in fraudulent transactions, diverting funds to shell companies owned by his relatives. These transactions are currently under investigation by the Enforcement Directorate (ED) for offences under the Prevention of Money Laundering Act 2002 (PMLA).

The CIRP commenced on January 1, 2024. A resolution plan was approved by the Committee of Creditors (CoC) on December 1, 2024, and subsequently sanctioned

by the National Company Law Tribunal (NCLT) on January 15, 2025. The resolution plan involved a complete change in management, with M/s. Khanna Ventures Pvt. Ltd., led by Mr. Sanjay Khanna, taking over the company. Mr. Khanna and his team were not in any way related to the previous management and had no prior involvement with Agarwal Textiles Ltd.

Following the approval of the resolution plan, the ED sought to attach the assets of Agarwal Textiles Ltd., arguing that the company was a beneficiary of the proceeds of crime committed by the former MD, Mr. Agarwal. M/s. Khanna Ventures Pvt. Ltd. filed an application before the NCLT, seeking immunity from such attachment under Section 32A of the IBC, contending that the resolution plan had been approved and implemented in good faith, and the new management was entirely independent of the previous wrongdoers.

Can Agarwal Textiles Ltd., under the new management of M/s. Khanna Ventures Pvt. Ltd. claim immunity under Section 32A of the IBC from the attachment of assets by the ED for offences committed by the former management before the commencement of the CIRP ? Analyse the applicability of Section 32A in this scenario.

(*5 marks*)

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